

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARVEL JONES,

Petitioner,

vs.

DON WHITMIRE,

Respondent.

8:20CV81

MEMORANDUM AND ORDER

MARVEL JONES,

Petitioner,

vs.

DON WHITMIRE,

Respondent.

8:20CV275

MEMORANDUM AND ORDER

These consolidated cases are before the Court on what is construed as Petitioner's Notice of Appeal, [Filing No. 52](#), Case No. 8:20CV81; [Filing No. 53](#), Case No. 8:20CV275, and a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis on appeal, [Filing No. 54](#), Case No. 8:20CV81; [Filing No. 55](#), Case No. 8:20CV275. The Notice of Appeal was filed more than a year after the Court entered its judgment in this case.

[Federal Rule of Appellate Procedure 4\(a\)\(1\)\(A\)](#) sets forth that a notice of appeal in a civil case must be filed within 30 days of the entry of judgment. This requirement is both "mandatory and jurisdictional." [Burgs v. Johnson Cnty., Iowa, 79 F.3d 701, 702 \(8th Cir. 1996\)](#). A district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause, provided

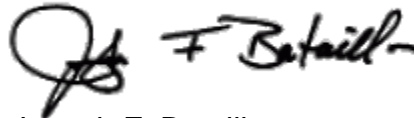
that the party moves for the extension of time within 30 days of the expiration of the 30-day period set out in [Rule 4\(a\)\(1\)\(A\)](#). [Fed. R. App. P. 4\(a\)\(5\)\(A\)\(ii\)](#). In addition, if a party files one of the post-judgment motions listed in [Rule 4\(a\)\(4\)\(A\)](#), the time to file the appeal runs from the entry of the order disposing of the motion. [Fed. R. App. P. 4\(a\)\(4\)\(A\)](#). An untimely notice of appeal cannot serve as a motion for extension of time to file an appeal. [Burgs, 79 F.3d at 702](#).

Here, the Court entered a final judgment dismissing this case on July 12, 2022. Petitioner filed his Notice of Appeal 479 days later. He did not file any post-judgment motions that would extend the time to file a notice of appeal. In addition, he did not move to extend the time to file a notice of appeal. Because Petitioner's appeal is grossly untimely, the Court certifies Petitioner's appeal is not taken in good faith and he is not entitled to proceed in forma pauperis on appeal. See [28 U.S.C. § 1915\(a\)\(3\)](#) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.").

IT IS ORDERED that: Petitioner may not proceed on appeal in forma pauperis.

Dated this 14th day of November, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", written over a horizontal line.

Joseph F. Bataillon
Senior United States District Judge